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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEXIS BAUTISTA, an individual,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, SAN FRANCISCO
POLICE DEPARTMENT, SAN
FRANCISCO POLICE OFFICER
WILLIAMS, SAN FRANCISCO POLICE
SERGEANT ESPINOZA, SAN
FRANCISCO POLICE OFFICER LUM,
DOES 1 to 20, Inclusive,

Defendants.

Case No. C07-5434 EMC

**OPPOSITION TO MOTION TO
ENLARGE TIME**

**REQUEST FOR DISMISSAL
PURSUANT TO MAY 2, 2008, COURT
ORDER**

1 Defendants oppose Plaintiff's motion to enlarge time. Defendants further request that the
2 Court enforce its May 2, 2008, order and dismiss Plaintiff's lawsuit for failure to prosecute.

3 On May 2, 2008, the Court issued an order regarding Defendants' motion to compel.
4 Defendants had filed that motion based on Plaintiff's failure to provide initial disclosures or to
5 respond to discovery. In its order, the Court ordered Plaintiff either to oppose the motion by May
6 22, 2008, or to provide initial disclosures and discovery responses by that day. The Court then
7 indicated that failure to comply with the deadline could result in dismissal of the case. *See*
8 Declaration of Scott Wiener, dated June 11, 2008, Ex. A. To date, Plaintiff has neither opposed the
9 motion to compel nor provided initial disclosures and discovery responses. *See* Wiener Decl. at ¶ 2.

10 Plaintiff has now taken the time to prepare a motion to enlarge her time by four months. She
11 has not, however, taken the time to provide initial disclosures or discovery responses. The Court
12 should deny Plaintiff's motion and should dismiss the lawsuit pursuant to the May 2 order. If the
13 Court does not dismiss the lawsuit, the Court should order Plaintiff to provide responses and
14 disclosures immediately.

15 If the Court grants Plaintiff's requested extension, the Court will need to modify the case
16 management order. Fact discovery is currently set to close on September 30. Yet, Plaintiff has
17 prevented Defendants from obtaining discovery from her. In addition to her failure to provide initial
18 disclosures or discovery responses, Plaintiff has repeatedly failed to appear for her deposition. *See*
19 Wiener Decl. at ¶ 3.

20 Defendants request that the Court deny Plaintiff's motion and dismiss this lawsuit.

21 Dated: June 11, 2008

22 DENNIS J. HERRERA
City Attorney
23 JOANNE HOEPER
Chief Trial Deputy
24 SCOTT D. WIENER
Deputy City Attorney
25

26 -/s/- *Scott D. Wiener*

27 By: _____
SCOTT D. WIENER
Attorneys for Defendants
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Declaration of Scott Wiener

I, Scott Wiener, declare as follows:

1. I am a Deputy City Attorney in the Office of the San Francisco City Attorney, counsel of record to Defendants in this lawsuit. I have personal knowledge of the contents of this declaration, and I could and would testify competently thereto if called upon to do so.

2. Attached hereto as Exhibit A is a true and correct copy of the Court's May 2, 2008, order. Defendants request that the Court take judicial notice of the order. To date, Plaintiff has not filed an opposition to Defendants' motion to compel. Nor has Plaintiff provided initial disclosures or responded to discovery.

3. Plaintiff canceled her deposition once and failed to appear for deposition the second time that Defendants noticed it.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on June 11, 2008, at San Francisco, California.

-/s/- *Scott D. Wiener*

Scott Wiener

BAUTISTA V. CCSF, ET AL. – US DISTRICT COURT NO. C07-5434 CW**PROOF OF SERVICE**

I, HELEN LAU, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On June 12, 2008, I served the attached:

OPPOSITION TO MOTION TO ENLARGE TIME**REQUEST FOR DISMISSAL PURSUANT TO MAY 2, 2008, COURT ORDER**

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

Alexis Bautista
1409 Saint Kitts Lane
Foster City, CA 94404
Telephone: (831) 703-4146
Cell Phone: (650) 518-1685
Facsimile: (650) 357-0119

Plaintiff In Pro Per

and served the named document in the manner indicated below:

- ☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.
- ☐ **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.
- ☐ **BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the San Francisco City Attorney's Office for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.
- ☐ **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true and correct copies of the above document(s) via a facsimile machine at telephone number (415) 554-3837 to the persons and the fax numbers listed above. The fax transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of the transmission report ☐ is attached or ☐ will be filed separately with the court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed June 12, 2008, at San Francisco, California.

-/s/- *Helen Lau*

HELEN LAU